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In The

Supreme Court of the United States

October Term, 1975

N. 75-915

VERNON LEE BOUNDS, etc. et al.,

Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents

R. L. TURNER, etc.,

Petitioner

v.

DONALD W. MORGAN, et al.,

Respondents

JAMES HOLSHOUSER, etc., et al.,

Petitioners

v.

JOHN HARRINGTON, et al.,

Respondents

SUPPLEMENTAL APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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N. 75-915

VERNON LEE BOUNDS, etc. et al.,
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SUPPLEMENTAL APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA RALEIGH DIVISION

No. 3052 Civil

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, AND

BRADFORD MIZELL LILLY, on behalf of themselves and all others similarily situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Corrections, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, North Carolina,

Defendants

MEMORANDUM OPINION AND ORDER

LARKINS, District Judge:

This cause comes before the Court in an action brought pursuant to the provisions of Title 42, United States Code, Section 1983, with jurisdiction of the Court based upon Title 28, United States Code, Section 1343. The Plaintiffs are all inmates within the North Carolina Department of Corrections, and they have brought this action under the provisions of Rule 23, Federal Rules of Civil Procedure, as a class action on behalf of themselves and all others similarly situated within the North Carolina Prison System. In substance, the Plaintiffs allege that they are being deprived of their rights under the First, Fourteenth, and Eighth Amendments of the United States Constitution due to the methods of operation of the writ room at Central Prison in Raleigh. North Carolina. The Defendants deny that these Plaintiffs, or any member of their class, have been denied any federally protected rights, and move the Court to dismiss the complaint without hearing, largely on jurisdictional grounds.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' allegations in this case are generally as follows: 1) That the Defendants are depriving them of their First Amendment right of freedom of access to the Courts by not

providing them with a law library at Central Prison, or at any other institution in the North Carolina Department of Corrections, 2) That the Defendants are denying them equal protection of the law under the Fourteenth Amendment by not providing poor and indigent prisoners with a law library, 3) That Defendants are denying them the right to assist illiterate inmates in the preparation and filing of legal petitions in violation of the dictates of *Johnson v. Avery*, 393 U. S. 483 (1969), 4) That the Defendants are operating the writ room at Central Prison in such a manner so as to cause undue delay in the filing of Court papers and civil suits, 5) That the Defendants are denying them the right to use typewriters to prepare petitions to the Court, 6) That all of the above treatment and allegations constitute cruel and unusual punishment as to these Plaintiffs.

Allegations 1 and 2 will be considered together for the purposes of this opinion, since they clearly relate to the same basic claim. Central Prison is the only institution within the North Carolina Department of Corrections which enjoys the use of a "writ room" where prisoners may prepare writs and petitions for presentation to the Courts. The writ room could not be said to contain all of the materials of a law library, nor could it be said to contain all of the resources of a lawyer's office. The Defendants, in their answer, have included a list of the volumes and materials which are available in the writ room for inmate research. These materials are as follows: 1) United States Supreme Court Reports (Lawyer's Edition) 1966-1971, 2) United States Supreme Court Advance Sheets 1966-1971, 3) North Carolina General Statutes, Vols. 1-A, 1-B, 1-C, 1-D, 2-A, and 4-A, 4) Advance Legislative Service to General Statutes, Vols. 1-15, 5) Law Textbooks: Cases and Materials on Criminal Law and Procedure (Remington), Modern Criminal Procedure (Hall and Kasimar), The Administration of Criminal Justice (2nd Ed., Sullivan, Hardin, Houston, Lacy, Murray, and Pugh), McCormick's Case on Evidence (3rd Ed.), and Criminal Law and Its Processes (Paulsen and Kadish).

The Plaintiffs claim that, as thus constituted, the writ room materials and volumes are insufficient to provide them with enough materials to insure their access to the Courts as guaranteed by the First Amendment to the Constitution of the United States, and that because of their indigency and condition as prisoners, they are deprived of equal protection of the law under the Fourteenth Amendment to the Constitution of the United States in that they are not provided with an ample law library that they can use to present their claims to the Court.

Of course, it is evident that the simple invocation of these phrases will not carry the day for the Plaintiffs, for it is clear that they must show further that these rights are not only affected by the policies and regulations under attack, but are infringed upon to such a degree as to render any justifications advanced by the State for the limitation of such a library inadequate and unreasonable as a matter of law.

In the present case, there is no regulation which expressly limits the size or makeup of the writ room at Central Prison or at any other Prison within the North Carolina System. The available materials are limited in fact, rather than by any administrative directive.

It is apparent to this Court that the materials available at the writ room in Central Prison, and throughout the entire Prison System in the State of North Carolina, are, at best, severely limited. There are no volumes of North Carolina case law, no volumes of Federal case law other than the United States Supreme Court reports for a period of 5 years, no complete set of North Carolina Statutes, and no set of United States Statutes of any kind. The volumes available would provide meager fare for a lawyer who is trained in his profession, and even more meager fare for an inmate who has no legal training to assist him in discerning how to file what petitions, and what to include in them. This Court takes notice that more than mere facts are necessary in order to

file a petition for relief by way of habeas corpus, for example. A prisoner should know the rules concerning venue, exhaustion of remedies, jurisdiction, and proper parties respondent. All too often, such points are raised in the respondent's brief and answer, and the prisoner, who had no way of realizing his initial mistakes, is left with the task of filing a traverse to cited authority which he has no means of obtaining. He should know which facts are significant to the Court, and which facts are unnecessary and confusing.

The Defendants in the present suit point out to the court that the Plaintiffs in the present suit have filed a great many petitions and suits in this Court and in other Courts since their incarceration in the North Carolina Department of Corrections. This Court fully agrees that this is so, and that, if volume is to be the test, these Plaintiffs are among the most prolific writ writers in the system. But this Court feels that it is not volume alone which should be used to test whether or not a prisoner is being deprived of his access to the Courts. Access does not mean the ability to file petitions or suits, but it rather means the ability to file *meaningful* petitions and suits. As the Court in *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970), stated: "It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary for all charges brought against him or grievances alleged by him." at p. 110.

The days of locking prisoners away in their cell, never to be heard from again are all but over, and, although it is elementary that prisoners are necessarily deprived of some of their basic rights, it is well settled that inmates cannot be deprived of all of their rights merely because they have been convicted of a crime. Surely, reasonable access to the Courts is one right which ought not to be limited by the fact of penal incarceration. A prisoner, perhaps more than the everyday citizen, has great need for meaningful access to the Courts. It is the only method for him to collaterally attack his conviction; and the only method for him to seek redress for wrongs done to him

while in prison. Admittedly, this Court decides a great number of seemingly frivolous petitions and cases submitted by prisoners each year. But this is a small price to pay for the petitions and cases which do present valid claims where the deprival of constitutional rights is apparent. Perhaps one of the reasons for the filing of so many frivolous petitions is that the prisoners do not have available enough legal research material to determine what claims are valid, and which are not.

In summary, this Court feels that the Plaintiffs herein have presented a prima facie case of their being deprived of reasonable and meaningful access to the Courts. It is clear to this Court that the materials supplied to prisoners in Central Prison, and the rest of the North Carolina Department of Corrections are not sufficient to insure that inmates have such access to the Courts of North Carolina, or of the United States. It appears to the Court, however, that, in light of the fact that the State has not filed a comprehensive answer to this claim and has only filed a motion to dismiss the claim, the Attorney General should be provided with an opportunity to fully respond to this allegation. If the State can demonstrate to the Court some overwhelming State interest in depriving inmates of such a right, this Court must take that into consderation before any further action.

Plaintiffs have also advanced an equal protection argument concerning the lack of available legal research material to them within the North Carolina Department of Corrections. This Court also feels that the Plaintiffs have presented a prima facie case in this regard, and directs that the Defendants herein fully respond to that argument as well. Specifically, it appears to this Court that the deprivation of equal protection in this case is based upon the inability of an indigent prisoner to have access to law materials and books on the same basis as an affluent prisoner or a member of society who can afford to employ a lawyer to petition the Court for the redress of his grievances. The argument may be advanced in this regard that there is no deprival of a *right* in this case, but rather only

the withholding of a privilege. In this respect, the Court feels that there is no privilege involved, but rather the right of a poor and uneducated prisoner to the tools necessary for an adequate hearing in both the State and Federal Courts. See VanAlstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv. L. R. 1439 (1968).

The Supreme Court has recently upheld the decision of the District Court for the Northern District of California, sitting as a three Judge panel, in which a California Prison Regulation limiting the number and types of legal research materials available to inmates was declared unconstitutional. *Gilmore v. Lynch*, 319 F. Supp. 105 (N. D. Cal. 1970); *aff'd sub nom. Younger v. Gilmore*, ... U. S. ....., 30 L Ed 2d 142, 92 S. Ct ....., (1971). This Court feels that that case is directly on point and applicable to the present action, despite the fact that an actual regulation of the Prison Officials was involved which limited the legal materials available to inmates. In the present case, there is no such regulation, but it seems clear to this Court that the *Gilmore* case did not rest solely on the fact that there was a regulation, but rather, rested on the proposition that the lack of an adequate library deprived inmates of their access to the Courts, and denied them equal protection of the law. The fact of the regulation merely dictated the manner in which the suit was brought. In the present case, while there is no such regulation, it is clear that in actual fact there has been a severely inadequate legal library for inmates to use. The Court would also welcome arguments in this regard from the defendants.

Plaintiffs' remaining contentions appear to be meritless, and must be dismissed. Allegation #3 is without merit since the North Carolina Department of Corrections has no regulation or policy of discouraging inmates from preparing writs or petitions for other inmates. Plaintiffs do not allege that they have ever been deprived of their right to assist their fellow inmates, nor do they allege that they have ever been punished

for such activity. Allegation #4 is without merit since this Court has already upheld the device of the writ room as a means of regulating the time and method of prisoner writ writing. See *Ross v. White*, Civil No. 2901, Raleigh Div. (E.D.N.C., March 16, 1972). Allegation #5 is without merit since this Court does not require that Petitions be typewritten before being submitted to the Court, (*Britt v. Henry*, Civil No. 2576, Raleigh Div. (E.D.N.C., July 7, 1970)) and there is no constitutional right of inmates to be provided with typewriters. *Williams v. United States Department of Justice*, 433 F. 2d 958 (5th Cir. 1970). Allegation #6 fails to show any conduct which could possibly be construed by this Court or any other to be cruel and unusual punishment.

NOW THEREFORE, in accordance with the foregoing, it is

ORDERED, that the Defendants' motion to dismiss the Allegation #s 3, 4, 5, and 6, as numbered in this opinion, be, and the same is hereby ALLOWED, and

FURTHER ORDERED, that the Defendants' motion to dismiss Allegation #s 1 and 2, as numbered in this opinion, be, and the same is hereby, DENIED, and

FURTHER ORDERED, that the Defendants shall respond fully to the Allegation #s 1 and 2, as set forth in this opinion, within 30 days, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilly, 835 West Morgan St., Raleigh, North Carolina, as representatives of the class in this class action, and upon Jacob L. Safron, Assistant Attorney General, P. O. Box 629, Raleigh, North Carolina.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
August 10th, 1972

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated, Plaintiffs	CIVIL NO. 3052
vs.	
VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, North Carolina, Defendants	MEMORANDUM OPINION AND ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming before the Court in an action brought pursuant to the provisions of Title 42, United States Code, Section 1983, with jurisdiction of the Court based upon Title 28, United States Code, Section 1343. The plaintiffs are inmates within the North Carolina Department of Correction, and have properly brought this action under the provisions of Rule 23, Federal Rules of Civil Procedure, as a class action on behalf of themselves and all others similarly situated within the North Carolina prison system.

The average daily population of the North Carolina Department of Correction is 10,000 inmates housed in 80 prison units located in 67 counties within the State. Central Prison, located in Raleigh, is the only institution that presently provides a writ room or law library. The legal material available at Central Prison consists of the following:

1. The United States Supreme Court Reports (Lawyers Edition) from 1966 to 1971.

2. The United States Supreme Court Advance Sheets from 1966 to 1971.

3. The North Carolina General Statutes volumes 1A, 1B, 1C, 2A, 4A.

4. Advance Legislative Service to General Statutes volumes 1 through 15.

5. Law textbooks, Cases and Materials on Criminal Law and Procedure (Remington), Modern Criminal Procedure (Hall and Kasimar), The Administration of Criminal Justice (2nd Edition, Sullivan), Hardin, Houston, Lacy, Murray & Pugh, McCormicks Cases on Evidence (3rd Ed.) and Criminal Law and Its Process (Kadish and Paulson).

The plaintiffs allege that (1) defendants are denying them their First and Fourteenth Amendment guarantees of reasonable access to the Courts by not providing them with a library at Central Prison or at any other institution within the North Carolina Department of Correction and (2) that the defendants are denying them equal protection of the law under the Fourteenth Amendment by not providing poor and indigent defendants with a law library. The defendants contend that the plaintiffs are not denied reasonable access to the Courts or equal protection of the law due to the fact that the state provides reasonable alternatives to law libraries, and that even if plaintiffs were denied reasonable access to the Courts, there is sufficient State interest in economy to justify the denial. Plaintiffs' motion for summary judgment is now before this Court.

This Court has previously considered the merits of plaintiffs' allegations in a Memorandum Opinion and Order written in response to defendants' motion to dismiss. In that opinion, the feeling that the materials supplied to prisoners in Central Prison, and the rest of the North Carolina Department of Correction are not sufficient to insure inmates reasonable access to the Courts is clearly expressed by this Court. The

State, however, was granted the opportunity to fully respond to plaintiffs' allegations, and to demonstrate any compelling State interests that might justify such limitations on prisoner's rights. After careful consideration of that response, it remains clear to this Court that materials supplied to prisoners in Central Prison and the rest of the North Carolina Department of Correction are not sufficient to insure that inmates have reasonable access to the Courts of North Carolina or the United States. The pleadings, motions and other materials of record in this action stand as uncontradicted evidence of the limited availability of any legal material or other legal assistance available to indigent inmates seeking habeas corpus relief. Even though these inmates are not invariably entitled to counsel to assist in the preparation of their petitions, some "provisions must be made to insure that prisoners have the assistance necessary to file petitions which will in fact be fully considered by the Courts." *Gilmore v. Lynch*, 319 F. Supp. 105, 110 (N. D. Calif. 1970), aff'd per curiam sub. nom. *Younger v. Gilmore*, 404 U. S. 15 (1971). The State of North Carolina has not produced any evidence demonstrating that it provides the necessary assistance to guarantee its indigent prisoners that their petitions receive full consideration.

In the answer filed by the defendants, great length was given to illustrate each situation in which the State presently provides counsel for indigent prisoners. Despite these efforts, however, there is no indication of any assistance at the initial stage of preparation of writs and petitions which is under consideration in this action. For this reason, the Supreme Court's affirmance of *Gilmore v. Lynch*, supra in *Younger v. Gilmore*, supra, in which it was held that indigent prisoners were denied reasonable access to the Court by a prison regulation limiting the number of books available in prison law libraries, compels this Court to find as a matter of law that indigent prisoners in North Carolina attempting to prepare writs of habeas corpus are denied reasonable access to the Courts. The fact that the California prison law libraries were limited by regulation while

the North Carolina prisons are only limited in fact, is of no consequence. It is not the presence or absence of a regulation that is important, but rather, whether each inmate is provided reasonable access to the Courts as is guaranteed him by the First and Fourteenth Amendments. *Hooks et al v. Wainwright*, *Hooks v. Wainwright*, 352 F. Supp. 163 (M. D. Fla. 1972).

This Court is also presented with the question of whether indigent inmates are denied equal protection of the laws under the Fourteenth Amendment by the absence of an adequate law library or reasonable alternative. The Court has taken Judicial Notice of the fact that more than simple facts are necessary to adequately prepare petitions and writs of habeas corpus. A prisoner should know the rules and venue, jurisdiction and proper parties respondent. To obtain this information, indigent prisoners are restricted to whatever legal reference material is available to them in prison and any additional assistance they might obtain from other inmates. It is clear, therefore, that the indigent prisoner, or his inmate assistant, who is not provided a law library or some other form of legal assistance within the prison, is denied the same opportunity to petition the Courts that is available to more affluent prisoners and members of society at large who can afford to employ lawyers to petition Courts for redress of the prisoner's grievances.

The Court thus finds as a matter of law that plaintiffs have been denied reasonable access to the Courts and equal protection of the laws under the First and Fourteenth Amendments. The plaintiffs are granted summary judgment on these issues, and the defendants are enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries.

The appropriate relief to be ordered in this case, however, presents a difficult problem. This Court is cognizant of the fact that due to the regional nature of the North Carolina prison system, the installation and maintenance of law libraries in eighty prisons would place a substantial financial burden on

the State. However, law libraries are not the only means by which a State can provide prisoners reasonable access to the Courts. As stated in *Gilmore v. Lynch*, 319 F. Supp. 105, (N. D. Calif. 1970), Aff'd per curiam sub. nom. *Younger v. Gilmore*, 404 U. S. 15 (1971), "The alternatives open to the State are legion. It might authorize Public Defenders to help inmates on collateral proceedings. Or it could institute programs whereby law students and professors could aid the indigent convict." The alternatives available to North Carolina are also legion. This Court will not attempt to dictate precisely what course the State should follow. Whether it could most easily and economically install law libraries in all prisons or implement a system whereby attorneys, either centrally or regionally located, are made available to all indigent prisoners is a question best answered by the Department of Correction. The Court, thus enjoins the State from providing only limited law library facilities to inmates and charges the Department of Correction with the task of devising a Constitutionally sound program providing all inmates with reasonable access to the Courts and equal protection of the law.

Accordingly, it is ordered that the Department of Correction be enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries, and further that it file with this Court before September 15, 1973, at Trenton, N. C., comprehensive proposals for providing plaintiffs law libraries or reasonable alternatives to them. If the plaintiffs desire oral argument on the sufficiency of the new proposals, they will move for a hearing thereon. Otherwise the Court will entertain written briefs and make such further decision as it deems necessary.

JOHN D. LARKINS, JR.
United States District Judge

Dated at:
Trenton, North Carolina
August 15, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

No. 3052 CIVIL
No. 4277 CIVIL

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, N. C.,

Defendants

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction,

Defendant

MEMORANDUM OPINION and ORDER

LARKINS, District Judge:

This is a consolidated action under Title 42 U. S. C. §1983 in which plaintiffs, inmates in the North Carolina Department of Correction, have alleged that the State has denied them reasonable access to the courts by not providing law libraries at the various institutions. By ORDER in case 3052 dated August 15, 1973 and adopted in case 4277 on the same date

this Court held as a matter of law that the plaintiffs had been denied reasonable access to the Courts and equal protection of the laws under the First and Fourteenth Amendments. Plaintiffs were granted summary judgment on these issues, and the defendants were enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries. The State was ordered to present a proposal to the Court for providing inmates with law libraries or reasonable alternatives thereto.

The average daily population of the North Carolina Department of Correction is 10,000 inmates housed in 80 prison units located in 67 counties within the state. Most of the units are small and localized, which has been found most beneficial in work release and other rehabilitative programs. But the advantage of many units becomes a disadvantage when the question of law libraries is at issue. It is obviously economically unfeasible to place law libraries in every unit.

On December 19, 1973 the State filed a comprehensive proposal with this Court establishing seven core libraries in various units to serve a designated area. Each library would contain the following material:

North Carolina General Statutes
North Carolina Reports (1960 - present)
N. C. Court of Appeals Reports
Strong's N. C. Index
North Carolina Rules of Court (West)
United States Code Annotated (West)
  Title 18
  Title 28 §§ 2241-2254
  Title 28 Rules of Appellate Procedure
  Title 28 Rules of Civil Procedure
  Title 42 §§ 1891-2010
Supreme Court Reporter (West: 1960 - present)
Federal 2d Reporters (West: 1960 - present)
Federal Supplement (West: 1960 - present)
Black's Law Dictionary (West)

Sokol: Federal Habeas Corpus (Michie)
LaFave and Scott: Criminal Law Hornbook (2 copies) (West)
Cohen: Legal Research
Criminal Law Reporter (Bureau of National Affairs)
Palmer: Constitutional Rights of Prisoners

Selection of core libraries would be based on the number of petitions filed and geographic location. Each unit would be provided with request forms for inmates to set up appointments to work in the nearest library. In most cases a full day's use would be allotted. Transportation and housing would be provided.

In addition, two smaller core libraries containing the North Carolina Statutes and treaties would be established for prisoners on indefinite non-punitive segregation in Central Prison and for the Correctional Center for Women. Inmates in these categories could request volumes from a larger core library, probably the one at Central Prison.

The State proposed that each library would be housed in a well-lighted room large enough to contain all volumes plus those added by expansion. Writing material and typewriters would be provided. It was hoped that inmates could be trained to be typists and research assistants to aid their fellow prisoners. There would be access to zerox machines. Inmates only desiring forms could receive them by mail from the nearest library. Finally, inmates with deadlines, eg. those filing appeals, would be granted priority. Efficiently operated, the program would allow approximately 350 inmates per week access to the law libraries. In addition, those merely desiring forms could be more satisfactorily served.

On April 29, 1974 the plaintiffs directed their attorney to object to the proposed plan for seven core libraries, contending that the proposal is totally inadequate. Plaintiffs contend that the State must provide a law library in *each* prison unit unless a reasonable alternative is found. They also feel each

library should include West's North Carolina Digest, Modern Federal Practice Digest, the entire U. S. Code Annotated, U. S. Law Week, and Shepard's Citations in addition to that proposed by the State. They also desire a circulating library containing all North Carolina Reports, Federal Supplements and U. S. Reports prior to 1960 as well as Federal Rules Decisions and Corpus Juris Secundum.

Johnson v. Avery, 393 US 483, 21 L Ed 2d 718, 89 S. Ct. 747 (1969) held that it was fundamental that access of inmates to the courts to present their complaints may not be denied or obstructed. The Supreme Court found that a regulation prohibiting "jailhouse lawyers" was unconstitutional where no reasonable alternatives existed to help inmates in the preparation of petitions. The Supreme Court noted that public defenders, law students, and local attorneys provided an alternative plan to aid inmates, but did not pass judgment on such programs.

In the instant case the issue for determination is whether the library system proposed by the State is a reasonable and constitutional method of insuring access to the courts.

In *Novak v. Beto*, 453 F. 2d 661 (5th Cir. 1972), it was found that the mere hiring of two attorneys and three summertime law students to handle inmate petitions did not satisfy the burden of proving a reasonable alternative to inmate legal assistance. Information as to the number of inmates desiring legal assistance, the complication of issues, and the time involved for each petition would be in order. However it appeared that the Circuit Court approved the use of independent attorneys to aid inmates with their petitions as a reasonable alternative to inmate assistance.

Gilmore v. Lynch, 319 F. Supp. 105 (N. D. Cal. 1970), ruled that the California prison libraries were inadequate. Although each institution had various codes and reporters, no real research aids were present to help the inmates, eg. treatises or annotated codes. The Three-Judge Court held:

> "Indigents asking for habeas corpus relief are not invariably entitled to court-appointed counsel . . . but Johnson v. Avery, supra, note 1, makes it clear that some provision must be made to ensure that prisoners have the assistance necessary to file petitions and complaints which will in fact be fully considered by the courts."

The State of California was given time to expand their libraries or provide some new method of satisfying inmates' legal needs. This decision was affirmed by the Supreme Court. *Younger v. Gilmore* 404 US 15, 30 L Ed 2d 142, 92 S. Ct. 250 (1971).

In the instant case it appears to this Court that the proposal of seven core libraries is a feasible solution to much of the problem of inmate assistance. The books to be required are more comprehensive than those in California in that (1) the North Carolina Code is annotated; (2) Strong's Index is the North Carolina Lawyer's valuable research tool in supplementing the Code; (3) the titles of the U. S. Code to be ordered are annotated; and (4) the various treatises will provide necessary interpretation to the pertinent areas of law.

This Court does not feel inmates need the entire U. S. Code Annotated. Most of that code deals with federal laws and regulations that would never involve a state prisoner. This Court deals with volumes of prisoner petitions each year, and the titles suggested cover all areas of inmate grievance. It is suggested however that two copies of Title 28 § 2254 and Title 42 §§ 1891-1984 be required for each core library.

It is also the opinion of this Court that the cost of N. C. Digest and Modern Federal Practice Digest will surpass the usefulness of these research aids. They cover mostly areas not of concern to inmates. And the pertinent annotations in them can be found by a careful reading of U. S. Code Annotated. U. S. Law Week is of little use to the inmate as the Supreme Court Reports will have advance sheets. And Shepards Citations is of dubious value to the inmate. It is noted that if the

paper supplements and advance sheets to the N. C. Supreme Court Reports, the N. C. Court of Appeals Reports, Federal 2d, Federal Supplement, and the Supreme Court Reports are retained, each library will have the equivalent of two volumes of each book. No reporter advance sheets or advance volumes should ever be discarded.

The establishment of seven core libraries is both economically feasible and practicable. Most of the 80 units are too small to house a library, and many of the road units have few if any inmates filing petitions. Seven core libraries, well staffed, will be ample to insure each inmate the time to prepare his petitions. If the State guarantees the transportation for inmates at units without libraries and if appointments are set up fairly and impartially, there would be no reason the suggested library system would not work.

Therefore this Court approves the libary plan submitted by the State with the exception of the suggestions as to volumes made above.

Oftentimes inmates, even with a good library at their disposal, are not able to perfect their writs due to legal inexperience. An independent office of prison attorneys, similar to the *Novak v. Beto* situation, would vastly improve inmate access to the courts. Of course in the habeas corpus and § 1983 cases attorneys are appointed where a claim shows merit. And the Court is aware of the new North Carolina Grievance Commission and the effect it will have on prison litigation. However, help is needed in preparing initial claims. Although this court is not ordering the State to establish one or more independent attorneys for inmates, it is suggesting that both sides consider this issue and alternatives to it. Briefs should be submitted to the Court by July 1, 1974 on the issue of establishing an independent attorney office to assist prisoners in their legal matters. Then, if oral argument is necessary, a hearing will be held to determine whether such is necessary to comply with *Johnson v. Avery*.

NOW THEREFORE, in accordance with the foregoing, it is ORDERED, that the State's proposed prison library plan is APPROVED AS MODIFIED, and

FURTHER ORDERED, that counsel for all parties submit briefs by July 1, 1974 on the issue of an independent attorney office, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Counsel of Record.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
May 29th, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 3052 RALEIGH DIVISION
No. 4277 RALEIGH DIVISION
No. 790 WASHINGTON DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, N. C.,

Defendants

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction,

Defendant

JOHN HARRINGTON, RAY FORBES, et al.,

Plaintiffs

v.

JAMES HOLSHOUSER, Governor, State of North Carolina, et al.,

Defendants

MEMORANDUM OPINION and ORDER

LARKINS, District Judge:

This is a consolidated action under Title 42 U.S.C. Section 1983 in which plaintiffs, inmates in the North Carolina Department of Correction, have alleged that the State has denied them reasonable access to the courts by not providing law libraries at the various institutions. By ORDER in case No. 3052 dated August 15, 1973 and adopted in case No. 4277 on the same date, this Court held as a matter of law that the plaintiffs had been denied reasonable access to the Courts and equal protection of the laws under the First and Fourteenth Amendments. Plaintiffs were granted summary judgment on these issues, and the defendants were enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries. The State was ordered to present a proposal to the Court for providing inmates with law libraries or reasonable alternatives thereto.

By ORDER dated May 29, 1974 this Court approved with minor modifications the State's prison library program. However, the Court was concerned whether the inmates would be able to properly perfect their petitions even with a good library at their disposal. Therefore the Court requested all parties to submit briefs on the possibility of setting up an independent office of prison attorneys, similar to that in *Novak v. Beto*, 453 F. 2d 661 (5th Cir. 1972), or a reasonable alternative thereto. Briefs were submitted in July, 1974, however the issue of prison libraries was pending on appeal in *Harrington v. Holshouser*, No. 790 Washington Division (No. 74-1320 on appeal). Therefore this Court withheld ruling on case No. 3052 and case No. 4277 until the final disposition of *Harrington v. Holshouser*.

On September 23, 1974 the Fourth Circuit remanded *Harrington v. Holshouser* to be considered with case No. 3052 and case No. 4277. The three cases are now consolidated for ruling. The issue for determination is whether an independent attorneys office is necessary to assist prisoners in their legal matters.

The plaintiffs contend (1) that the State's library plan does not determine the need for assistance in using the library, (2) that a prison library system is of little value without some legal assistance, and (3) that an independent attorneys office would be more efficient and less costly in the long term. The State argues (1) that since North Carolina does not bar mutual inmate assistance, the library system is more than adequate to meet the standards of *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969), and (2) that *Ross v. Moffitt*, ... US ....., 41 L Ed 2d 341, 94 S Ct ..... (1974), holding that an indigent is not entitled to counsel for discretionary appeals, is applicable to inmate petitions.

This Court has carefully studied the file in this case and is of the opinion that the library system proposed by the State and approved by this Court as modified is a reasonable and constitutional method of insuring access to the courts. North Carolina has no statute barring inmate legal assistance. The library facilities, now inadequate, will be more adequate once the proposed plan is put into effect. The newly formed inmate grievance committee will give the inmates an avenue of relief that should eliminate the need for court action in many cases. Finally, should a petition be found to have possible merit, both the State and Federal Courts appoint counsel to assist the prisoners with their claims. (See N.C.G.S. § 7A-451 (a); This case is an example). Therefore it appears that under *Johnson v. Avery* the inmates in North Carolina will have reasonable and constitutional access to the Courts under the approved library plan.

The State has also cited *Ross v. Moffitt*. While inapplicable to the instant situation because it deals with counsel for indigents in discretionary appeals, some of the reasoning is appropriate. The Supreme Court found that while a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons, appeal is a different matter from initial trial. At trial a defendant needs a shield to protect his presumption of innocence. On appeal he

takes the sword to upset the prior determination of guilt. Habeas corpus proceedings are similar attacks on the constitutionality of conviction brought at the inmate's discretion. Therefore an independent attorneys office would not be constitutionally mandated. As stated in *Ross v. Moffitt*, such legal assistance would be a State choice and not one for the Federal Courts:

> "We do not mean by this opinion to in any way discourage those States which have, as a matter of legislative choice, made counsel available to convicted defendants at all stages of judicial review. Some States which might well choose to do so as a matter of legislative policy may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. North Carolina, for example, while it does not provide counsel to indigent defendants seeking discretionary review on appeal, does provide counsel for indigent prisoners in several situations where such appointments are not required by any constitutional decision of this Court. Our reading of the Fourteenth Amendment leaves these choices to the State, and respondent was denied no right secured by the Federal Constitution when North Carolina refused to provide counsel to aid him in obtaining discretionary appellate review." See 41 L Ed 2d at 355, 356.

While holding that these plaintiffs do not have a constitutional right to have an independent attorneys office as well as a law library program, this Court feels that such an independent attorneys office would be a practical and efficient means of implementing the law library system. A staff of two or three attorneys would solve problems involving (1) poorly drawn writs, (2) consolidation of grounds, (3) proper filing in the proper courts, (4) proper exhaustion of remedies, and (5)

possible extortion by writ-writers. It could eliminate much of the administrative cost of both State and Federal court systems by diminishing the number of petitions, avoiding duplication (as in this case), clarifying contentions, and facilitating disposition. But, as stated in *Ross v. Moffitt*, this woud be a decision of the State Legislature, not one for this Court.

NOW THEREFORE, in accordance with the foregoing, it is

ORDERED, that Case No. 790-RE, Washington Division, *Harrington v. Holshouser*, be CONSOLIDATED with Case No. 3052, Raleigh Division, *Smith v. Bounds*, and Case No. 4277, Raleigh Division, *Morgan v. Turner*, and

FURTHER ORDERED, that the issue of establishing an independent attorneys office be RESOLVED IN FAVOR OF THE STATE, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Mr. Howard E. Manning, Attorney at Law, P. O. Box 1150, Wachovia Bank Bldg., Raleigh, N. C. 27602; and upon Mr. Jacob L. Safron, Assistant Attorney General, State of North Carolina, P. O. Box 629, Raleigh, N. C. 27602; and upon Mr. Donald W. Morgan, 835 West Morgan St., Raleigh, N. C. 27603; and upon Professor Barry Nakell, University of North Carolina, School of Law, Chapel Hill, N. C. 27514; and upon Mr. Norman B. Smith, Attorney at Law, 704 Southeastern Building, Greensboro, N. C. 27401; and upon the Fourth Circuit Court of Appeals; and upon Deputy Clerk, Washington Division, P. O. Box 1336, New Bern, N. C. 28560.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
October 10th, 1974

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 3052 RALEIGH DIVISION
No. 4277 RALEIGH DIVISION
No. 790 WASHINGTON DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, N. C.

Defendants

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction,

Defendant

JOHN HARRINGTON, RAY FORBES, et al.,

Plaintiffs

v.

JAMES HOLSHOUSER, Governor, State of North Carolina, et al.,

Defendants

ORDER

LARKINS, District Judge:

In that this Court approved the State's proposed prison library plan by ORDER dated May 29, 1974, with modifications, and

In that the issue of establishing an independent attorneys office was resolved in favor of the State with the determination that such office was not constitutionally required.

It is hereby ORDERED, that the State's proposed prison library plan, attached hereto, be ADOPTED with the following modifications:

1. that two copies of Title 28 U.S.C.A. § 2254 and Title 42 U.S.C.A. §§ 1891-1984 be required for each core library;

2. that no reporter advance sheets or volumes be discarded, in effect giving each library two volumes of each current reporter, and

FURTHER ORDERED, that the State has 120 days from the date of the filing of this ORDER in which to implement the prison library plan, such time to be tolled in the event an appeal is taken from this ORDER, and

FURTHER ORDERED, that the State is to select the locations of the core libraries, subject to the approval of this Court, and

FURTHER ORDERED, that the State file a Certificate of Compliance with this Court upon final implementation of the prison library plan, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Mr. Howard E. Manning, Attorney at Law, P. O. Box 1150, Wachovia Bank Bldg., Raleigh, N. C. 27602; and upon Mr. Jacob L. Safron, Assistant Attorney General, State of North Carolina, P. O. Box 629, Raleigh, N. C. 27602; and upon Mr. Donald W. Morgan, 835 West Morgan St., Raleigh, N. C. 27603; and upon Professor Barry Nakell, University of North Carolina, School of Law, Chapel

Hill, N. C. 27514; and upon Mr. Norman B. Smith, Attorney at Law, 704 Southeastern Building, Greensboro, N. C. 27401; and upon the Fourth Circuit Court of Appeals; and upon the Deputy Clerk, Washington Division, P. O. Box 1336, New Bern, N. C. 28560.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
October 11th, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated, Plaintiffs	CIVIL NO. 4277
vs. R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendant	MEMORANDUM OPINION AND ORDER

This cause came to be heard on the motion made by plaintiffs for an order directing that summary judgment be entered in favor of the plaintiffs on the cause of action set forth in Section III, paragraph 9, subparagraph (a) of the plaintiffs' pleading alleging that the defendant R. L. Turner is denying them their First Amendment right to reasonable access to the Courts by not providing the indigent plaintiffs or the class they represent with law libraries, writ rooms, or legal reference materials. It appears to the Court from the pleadings, affidavits, exhibits, memorandum, and other evidence in this cause and from the order of this Court in the case of *Robert (Bobby) Smith, Donald D. Carnes, Richard A. Carter and Bradford Mizell Lilly, on behalf of themselves and all others similarly situated vs. Vernon Lee Bounds, Commissioner, State Department of Correction and Stanley Blackledge, Warden, Central State Prison, Raleigh, North Carolina,* Civil No. 3052, an order based upon identical facts which would be decisive of this issue, that there is no genuine issue of any material fact and, pursuant to Rule 56, Federal Rules of Civil Procedure, that the plaintiffs are entitled to judgment as a matter of law.

THEREFORE, it is hereby ORDERED that summary judgment be entered in favor of the plaintiffs permanently enjoining the defendants from denying plaintiffs a law library or reasonable alternative to a law library.

The order of summary judgment issued in *Robert (Bobby) Smith, et al v. Vernon Lee Bounds, etc. et al,* Civil No. 3052, directed the North Carolina State Department of Correction to file with this Court on or before Sept. 15, 1973 comprehensive proposals designed to provide all prisoners reasonable access to the Courts. If plaintiffs, in this cause, desire oral argument on the adequacy of these proposals, they will properly move for a hearing at that time. Otherwise, the Court will receive written briefs concerning the proposals, and make such further decisions as it deems appropriate.

It is further ORDERED that this cause of action be, and the same hereby is severed, and that this matter proceed with respect to the remaining causes of action alleged in the complaint herein as though this order had not been granted.

JOHN D. LARKINS, JR.
United States District Judge

Dated at:
Trenton, North Carolina
August 15, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WASHINGTON DIVISION
NO. 790 CIVIL

JOHN HARRINGTON, ALONZO WATTS, CLIFTON SPEIGHT, WILLIAM RYDER, RONNEY MCBRIDE, RAY FORBES,

Plaintiffs

v.

JAMES HOLSHOUSER, Governor, State of North Carolina; V. LEE BOUNDS, Commissioner, N. C. Department of Corrections; DR. STANLEY BLACKLEDGE, Warden, Central Prison; F. R. MOORE, Sergeant, Central Prison; FRANKLIN MAHAN, Regional Superintendent; M. S. LEE, Captain, Washington County Unit 3560 Creswell, North Carolina,

Defendants

MEMORANDUM OPINION and ORDER

LARKINS, District Judge:

This is an action brought pursuant to Title 42 U.S.C. Section 1983. Plaintiffs seek monetary damages and injunctive relief for alleged deprivations of their civil rights. The thrust of the Complaint is that Plaintiffs were denied access to the Courts in that Defendant Moore, returned papers forwarded to him from inmates at the Creswell Unit. The Plaintiffs feel he neglected performance of his duty as a notary public and delayed their legal remedies. Plaintiffs also allege that prison officials have denied the use of proper supplies to inmates wishing to write to the Courts and pray that a writ room be established at Creswell. The Defendants have answered and

moved for summary judgment. Affidavits have been filed with the Court.

Sergeant Moore is in charge of the Writ Room at Central prison. He is also a notary public and verifies all writs processed at Central Prison. In his affidavit he stated that he was legally unable to notarize the petitions in question because the Plaintiffs were not personally present before him when they signed their petitions. He also stated that because of the great volume of petitions filed at Central Prison, the writ room could not type and make copies for inmates not located at Central Prison. In returning the papers to the Plaintiffs, Sgt. Moore wrote them and informed them why they were being returned and suggested the use of carbon paper to make copies. He explained that the writ room cannot handle papers for inmates throughout the state.

The Plaintiffs do not contend that they are being denied notarial services at Creswell. In fact, this Court takes judicial notice that this petition as well as another of Plaintiff Harrington and another of Plaintiff Forbes have been notarized and filed since the return of the papers by Sgt. Moore. It is certainly clear to the Court that the Plaintiffs rights of access to the courts have not been impeded and were not impeded by the procedural steps by Sgt. Moore. Any delay is certainly not of a constitutional magnitude.

The Plaintiffs' claim that they have been denied supplies with which to prepare petitions is also without merit. Mr. Rothenberger, acting superintendent of the Washington County Subsidiary, stated in his affidavit:

> "That at no time have the Plaintiffs been denied the right to prepare writs, petitions, or other papers to petition the courts. Paper and supplies are furnished when requested. At one time, due to the unusual demand for paper, the supply was exhausted, but as soon as delivery was made on the submitted

> requisitions the paper was again given those requesting it."

The Plaintiffs do not allege that supplies are totally withheld, and in fact the Court takes judicial notice that the Plaintiffs have in fact received supplies to prepare petitions. The temporary exhaustion of supplies does not give rise to a constitutional violation of rights under 42 U.S.C. 1983.

The fact the Plaintiffs do not have access to a typewriter is not a claim of constitutional magnitude. The instructions on the forms provided require that the applications be in writing that is legible, either handwritten or typed. The Court does not require that the applications or petitions be typewritten, and equal consideration is given to all inmate requests of the Court. See *Britt v. Henry*, Civil No. 2576 (E.D.N.C. July 2, 1970).

Finally, the Plaintiffs would have this Court require the Department of Correction to provide a writ room at the Creswell Unit. The only institution in the 80 unit complex of the Department of Correction with a writ room is Central Prison. Although the Courts have upheld prison rules regulating the use of writ rooms, no Court has held that prisoners are entitled as a matter of right to a writ room. They are entitled to access to the courts, but not typewriters. See *Williams v. U. S. Department of Justice*, 433 F. 2d 958 (5th Cir. 1970). It is apparent to this Court that the Plaintiffs have not been denied access to the courts. The fact the insitution where they are confined does not have a writ room has not deprived them of access to the courts and is not a violation of their constitutional rights. It would be unduly burdensome on the State to supply writ rooms to all 80 units in the state. As long as the State supplies adequate supplies to the inmates so that they may write the courts, and this the State does, this Court is not going to order that writ rooms be established at any unit.

In the Complaint the Plaintiffs mention three petitions which were returned by Sgt. Moore. The petition by Plaintiff

Harrington has been filed properly with this Court and will be considered after a similar case is decided, see *Harrington v. Holshouser, et al.*, No. 791 Washington Division. The petitions by Plaintiff Speight and Plaintiffs Watts, Ryder, Speight, Davis, and McBride are mere conclusory allegations without any factual basis whatsoever. It is impossible for this Court to consider these at this time. It is suggested that they do as Plaintiff Harrington did and properly prepare their petitions and present them to this Court in the correct form. The unsupported allegations should be supported by facts, affidavits, and any other material the Plaintiffs find pertinent.

NOW THEREFORE, in accordance with the foregoing, it is ORDERED, that the Defendants' motion for summary judgment be, and the same is, hereby ALLOWED, and

FURTHER ORDERED, that this case be, and the same is, hereby DISMISSED, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Mr. John Harrington, Mr. Alonzo Watts, Mr. Clifton Speight, Mr. William Ryder, Mr. Ira Davis, Mr. Ronney McBride, Mr. Ray Forbes, as a class, Washington County Unit 3560, Route 2, Box 137, Creswell, N. C.; and upon Mr. Jacob L. Safron, Assistant Attorney General, State of North Carolina, P. O. Box 629, Raleigh, N. C. 27602.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
May 24, 1973